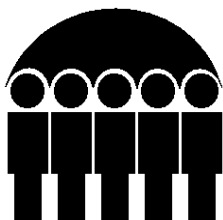


Revised December 2, 2005

Employees' Manual
Title 12
Chapter E

CHILD CARE CENTERS



Iowa
Department
of
Human Services

	<u>Page</u>
OVERVIEW	1
Purpose of Child Care.....	1
Legal Basis.....	1
Definitions	2
Minimum Requirements	5
Consultative Services.....	5
LICENSING PROCEDURE.....	6
Right to Apply	8
Requested Reports	8
Open Pending a Licensing Decision.....	9
Licensing Decision	10
MONITORING COMPLIANCE.....	12
Complaints	12
Investigations for Child Abuse Referrals.....	13
Unlicensed Child Care Center	14
DENIAL, SUSPENSION, OR REVOCATION OF LICENSE	15
NOTICE TO PARENTS.....	17
License Denied, Suspended, or Revoked.....	17
Founded Child Abuse	19
LICENSING RECORD	25
RECORD CHECKS	26
Deferred Judgments	27
Record Check Evaluation	27
Criminal Convictions	30
Abuse Reports	32
Record Check Decision	33

OVERVIEW

Child care centers provide care for periods of less than 24 hours in a place other than the children's home. Child care staff are responsible to operate a program geared to each child's developmental needs, so that it contributes positively to the child's social, physical, emotional, approaches to learning, communication, language, literacy, mathematics, science, social studies and creative arts growth.

The Department of Human Services carries out the provisions for licensing in child care law and establishes minimum standards. The Department offers consultation and assistance in applying for a license and meeting the requirements of a licensed center through the child care consultants.

Purpose of Child Care

Child care does not supersede parental rights, responsibilities, and relationships. Rather it is an effort to assist parents in fulfilling their responsibilities for protecting the child and providing opportunities for the child's development. A child care center supplements the home by sharing responsibilities with the parents, whether for economic, social, health or educational reasons.

The purpose of child care should be to provide safe, healthy, and developmentally appropriate care. A child care center should be a place where children feel loved and wanted; where supervision is responsible and where the program provides activities that contribute to the developmental growth of the child.

Legal Basis

Licensing of child care centers is a responsibility of the Department of Human Services as provided under Iowa Code Chapter 237A.

Iowa Code Section 237A.12 gives the Department authority to promulgate minimum requirements to provide quality child care in the operation and maintenance of child care centers. Minimum requirements promulgated by the Department are found in 441 Iowa Administrative Code Chapter 109.

Rules promulgated by the State Fire Marshal for buildings and fire safety under authority of Iowa Code Section 237A.12 are found in 661 Iowa Administrative Code Chapter 5.

Definitions

Legal reference: Iowa Code Section 237A.1

“Child care” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. “Child care” does not include care, supervision, and guidance of a child by any of the following:

- ◆ An instructional program for children who are attending pre-kindergarten, as defined by the State Board of Education, or a higher grade level and are at least four years of age that is administered by any of the following:
 - A public or nonpublic school system accredited by the Department of Education or the State Board of Regents.
 - A nonpublic school system that is not accredited by the Department of Education or the State Board of Regents.

Note: Many operating school systems in Iowa have not been accredited by the Department of Education. Pre-kindergarten programs serving children younger than four years old or programs providing before and after school-age care in a non-accredited school system are required to be licensed.

- ◆ A school-based child care or preschool operated by or contracted for by the school board of a public or accredited nonpublic school that meets the standards for child care programs adopted by the State Board of Education.
- ◆ Any of the following church-related programs:
 - An instructional program.
 - A youth program other than a preschool, before or after school child care program, or other child care program.
 - A program providing care to children on church premises while the children’s parents are attending church-related or church-sponsored activities on the premises.

- ◆ Short-term classes of less than two weeks' duration held between school terms or during a break within a school term.
- ◆ A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the Department of Inspections and Appeals.
- ◆ A program operated by volunteers not more than one day per week that meets all of the following conditions:
 - No more than 11 children are served per volunteer.
 - The program operates for less than four hours during any 24-hour period.
 - The program is provided at no cost to the children's parent, guardian, or custodian.
- ◆ A program administered by a political subdivision of the state that is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.
- ◆ An after-school program continuously offered throughout the school year calendar to children who are at least five years of age, are enrolled in school, and attend the program intermittently, or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.
- ◆ A special activity program that meets less than four hours per day for the sole purpose of the special activity. "Special activity programs" include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.
- ◆ A nationally accredited camp.
- ◆ A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:
 - A purchase of service or managed care contract with the Department.
 - An arrangement approved by a juvenile court order.
 - A contract approved by a local decategorization governance board.
- ◆ Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.
- ◆ A child care facility providing respite care to a licensed foster family home for a period of 24 hours or more to a child who is placed with that licensed foster family home.

OVERVIEW

Definitions

Revised December 2, 2005

Iowa Department of Human Services
Title 12 Licensing and Approval Standards
Chapter E Child Care Centers

- ◆ A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided.

“Child care center” or **“center”** means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child development home.

“Preschool” means a child care facility that provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

“Minimum requirements” means the rules promulgated by the Department of Human Services in 441 Iowa Administrative Code 109 to provide a basis for quality child care in the operation and maintenance of child care centers.

“Transgression” means the existence of any of the following in a person's record:

- ◆ Conviction of a crime.
- ◆ A record of having committed founded child or dependent adult abuse.
- ◆ Listing in the Sex Offender Registry.
- ◆ A record of having committed a public or civil offense.
- ◆ Revocation of a child care facility registration or license due to the person's continued or repeated failure to operate the facility in compliance with child care laws and rules.

Minimum Requirements

Legal reference: Iowa Code Chapter 237A and 441 IAC Chapter 109

Policy: In order to be issued a license, a child care center is required to:

- ◆ Meet the minimum requirements promulgated by the Department, or
- ◆ Have an acceptable plan of corrective action for meeting the minimum requirements.

Comment: The minimum requirements for a license are explained in Comm. 204, *Child Care Centers and Preschool Licensing Standards and Procedures*. See 12-E-Appendix.

Procedure: The child care consultant:

- ◆ Determines if the facility meets minimum requirements,
- ◆ Determines if the facility qualifies for a license, and
- ◆ Makes a licensing recommendation.

The consultant completes forms 470-3940, *Licensing Regulation Checklist*, and 470-0724, *Child Care Center Evaluation and Recommendation for License*, to document these tasks. See **LICENSING PROCEDURE**.

Consultative Services

Legal reference: Iowa Code Section 237A.6

Policy: The child care consultant shall provide consultative services to a person applying for or holding a child care center license. These services shall be directed toward assisting the program in meeting and maintaining the minimum requirements for licensing and then proceeding beyond that level to a program of high quality.

Procedure: The child care consultant may provide consultative services in a variety of ways, directly or indirectly. Consultative services shall be provided:

- ◆ To license applicants, currently licensed operators, groups, organized boards, and communities on:
 - How to organize and establish a child care facility and
 - How to achieve quality programs.

OVERVIEW

Consultative Services

Revised December 2, 2005

Iowa Department of Human Services
Title 12 Licensing and Approval Standards
Chapter E Child Care Centers

- ◆ To local office staff, empowerment boards, and county boards of social welfare on child care and related matters.
- ◆ To licensed facilities on:
 - Activity program requirements
 - Administration
 - Environmental hazards
 - Extended evening care
 - Food services
 - Get well center
 - Health and safety policies
 - Parental participation
 - Personnel
 - Physical facilities
 - Professional growth and development
 - Records
 - Staff ratio
 - Surpassing minimum requirements to achieve programs of quality

Consultative services may involve drawing on other persons and resources for additional expertise in certain areas, depending on the individual consultant and the area in which consultation is requested.

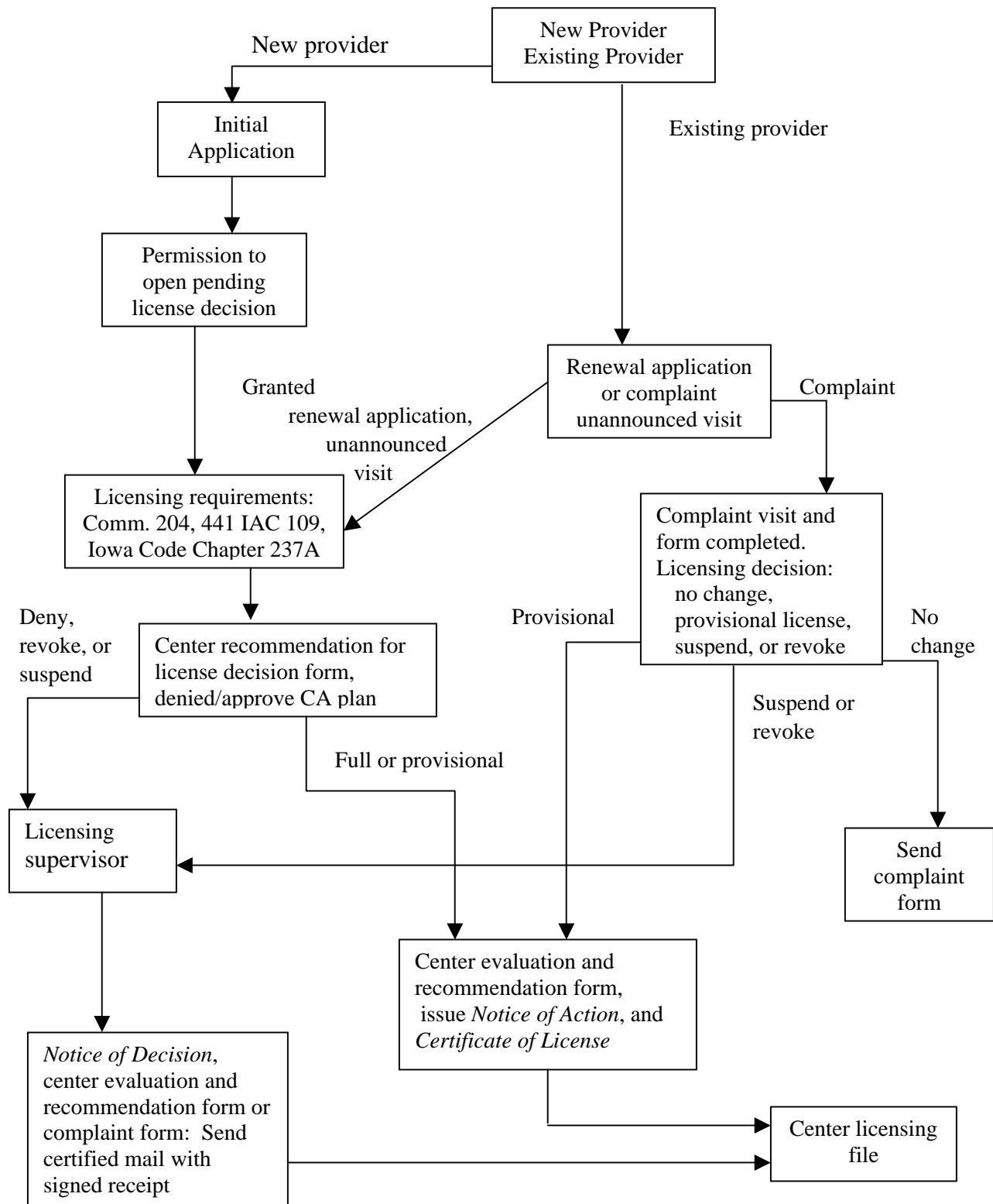
LICENSING PROCEDURE

Legal reference: Iowa Code Section 237A.2

Policy: The Department shall issue a license to operate as a child care center if:

- ◆ The center has submitted a complete application for a license or a renewal to the consultant on forms provided by the Department;
- ◆ The consultant has determined the facility complies with the minimum requirements promulgated by the Department or has an acceptable corrective action plan;
- ◆ The center has an approved State Fire Marshal's report issued within the last year; and
- ◆ Occupancy has been approved by the local building inspector when required by local ordinance.

Comment: Fire safety requirements are found in the rules of the Department of Public Safety, 661 IAC Chapter 5.



Right to Apply

Legal reference: 441 IAC 109.2(237A)

Policy: Any adult person or agency has the right to apply for a license. The application for a license shall be made on form 470-0722, *Application for a License to Operate a Child Care Center*, signed by the chairperson of the board or the owner or the operator of the facility. The application shall be submitted to the child care consultant assigned to the center.

A new license shall be obtained when:

- ◆ The person or agency opens a new child care center or preschool, or
- ◆ The existing license expires, or
- ◆ A licensed center moves or expands, or
- ◆ A licensed center is remodeled to change licensed capacity, or
- ◆ Another adult or agency assumes ownership or legal responsibility for the center.

Procedure: The Department provides form 470-0722, *Application for License to Operate a Child Care Center*. Send this form:

- ◆ To a prospective center upon request and
- ◆ To an existing center 60 days in advance of the license renewal date.

The center shall complete the form in full and return it to the Department child care consultant. The Department cannot make a decision on an incomplete application.

Requested Reports

Legal reference: 441 IAC--109.2(237A) and 109.15(6)

Policy: The applicant shall furnish to the Department requested reports, including the fire marshal's report and other information relevant to the licensing determination.

Comment: The State Fire Marshal or an approved designee must inspect each child care center applying for a license or renewal of license. The Fire Marshal must approve the site in writing in order for a license to be issued. To be valid, a fire safety approval cannot be more than one year old from the date of issuance.

When an initial application is made, or when the location or floor plan is changed, the center shall submit to the child care consultant a drawing of the floor plan, including all measurements.

Plans for new construction and plans for additions or structural alterations to existing facilities must be submitted to the child care consultant and to the office of the State Fire Marshal or the fire marshal's approved designee and shall have the written approval of the fire marshal or designee.

The child care center must comply with all local ordinances such that occupancy has been granted where required.

Where the facility uses a private water supply, a copy of the laboratory analysis shall be attached to the evaluation form in the file maintained by the child care consultant. If the laboratory analysis is not satisfactory, then an alternative plan for water supply approved by the child care consultant shall be a part of the evaluation form in the file maintained by the child care consultant.

Open Pending a Licensing Decision

Legal reference: 441 IAC 109.2(1)“c”

Policy: A center that has submitted a sufficient application for a license to the child care consultant may operate for a period of up to 120 days, pending the final licensing decision. A “sufficient” application for a license shall include:

- ◆ A complete *Application for a License to Operate a Child Care Center*, form 470-0722.
- ◆ An approved State Fire Marshal's report.
- ◆ A floor plan indicating room descriptions and dimensions, including the location of windows, doors, and exits.
- ◆ Information sufficient to determine that the center director meets the minimum qualifications.
- ◆ Occupancy approval when required by local ordinances.

Procedure: The child care consultant sends a written letter to the center identifying the date of approval to open the facility pending the licensing decision.

Licensing Decision

Legal reference: 441 IAC 109.2(237A)

Policy: The Department shall notify the applicant of approval or denial within 120 days of receipt of a complete application. A “complete application” is the application form completed in full and the requested reports.

The application shall be denied when the applicant does not comply with center licensing laws or does not meet the minimum requirements for a full or provisional license.

A provisional license may be issued for a period up to one year when the center does not meet all standards imposed by law or the minimum requirements. A provisional license shall be renewable when written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the Department.

A full license shall be issued when an applicant has shown full compliance with center licensing laws and the minimum requirements.

Procedure: Upon receipt of a signed application, form 470-0722, the child care consultant shall make one or more on-site visits to complete:

- ◆ The *Licensing Regulation Checklist*, form 470-3940 and
- ◆ The *Child Care Evaluation and Recommendation for License*, form 470-0724.

The visits shall include a careful evaluation of all aspects of the center’s operation to determine compliance with the child care licensing law and the minimum requirements.

An evaluation shall include:

- ◆ A review of files, records, policies, menus, programs, schedules, etc.
- ◆ A complete inspection of the facility for safety, sanitation, and space requirements.
- ◆ Observation of the program.
- ◆ Interviewing of staff and, possibly, board members and children attending the program.

Two or more visits to the facility may be required in order to complete a thorough evaluation. Return visits are essential for new applicants and facilities with provisional licenses.

After review of the *Licensing Regulation Checklist*, the fire marshal's report, and any other pertinent reports, the child care consultant shall:

- ◆ Complete the *Child Care Center Evaluation and Recommendation for License* and
- ◆ Make a recommendation.

Send recommendations to grant a full or provisional license to the Division of Child and Family Services for the *Notice of Action* and license to be issued.

Send recommendations to deny or revoke a license to the licensing supervisor for approval and processing.

The Division Child and Family Services will complete two copies of the *Notice of Action*, form 470-0728.

- ◆ One copy of the *Notice of Action* is mailed to the child care consultant.
- ◆ The other copy is mailed to the center with:
 - The *Child Care Evaluation and Recommendation for License*, and
 - The license certificate (or a new seal for a renewal or change in licensing status to provisional).

MONITORING COMPLIANCE

The following sections address:

- ◆ Investigation of complaints about the operation of a facility
- ◆ Collaborative investigation of reports of child abuse in the facility
- ◆ Response to evidence that a center is operating without a license

Complaints

Legal reference: 441 IAC 109.3(237A)

Policy: The Department shall keep a record of all complaints received, findings of licensing violations associated with the complaint, and resolutions of all licensing violation associated with complaints. Contents of the complaint file shall be available to the public, except that disclosure of the identity of the complainant shall be withheld unless expressly waived by the complainant.

Comment: The intent of the complaint policy is to record and resolve complaints related to licensing requirements. Complaints that do not relate to licensing requirements must be resolved between owner or operator of the center and the complainant.

Procedure: After the complaint has been investigated:

1. The child care consultant shall open a complaint file.
2. The consultant shall document noncompliance, resolution, and correction information on form 470-4067, *Child Care Center Complaint*. Send a copy of this form to the center and place a copy in the licensing file.

Note: If the complaint is going to result in a negative licensing action, the licensing supervisor must approve the action and send the *Notice of Decision* and the *Child Care Center Complaint*.

3. The Department shall notify the facility by certified mail of any adverse action to suspend or revoke the license.

Investigations for Child Abuse Referrals

Legal reference: Iowa Code Section 237A.4

Policy: When it is alleged that child abuse has occurred in a licensed child care center, the child protection worker shall immediately inform the child care consultant. The child protection worker and the child care consultant shall plan a collaborative assessment of the center's actions based upon the known facts of the case.

The child care consultant's participation in the investigation of the alleged abuse shall focus on compliance issues with the child care licensing rules and law. The Department "may inspect records maintained by the center and may inquire into matters concerning these centers and the persons in charge."

Procedure: Use the following procedures for the collaborative assessment of a licensed child care center upon receipt of a report of suspected child abuse occurring within the center:

1. The child protection worker and the child care consultant should make the first visit to the center jointly, if possible. When the nature of the complaint indicates a health and safety risk for children in care, the child care consultant shall make the first visit within 24 hours. Other joint visits may be advantageous to both investigators.
2. The child care consultant shall open a complaint file.
3. After the child care consultant has thoroughly assessed the referral, the consultant shall document noncompliance, resolution, and correction information on form 470-4067, *Child Care Center Complaint*. Send a copy of this form to the center and place a copy in the licensing file.
4. If the complaint is going to result in a negative licensing action, the licensing supervisor must approve the action and send the *Notice of Decision* and the *Child Care Center Complaint*. Notify the facility by certified mail of any action to suspend or revoke the license. See **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE** for procedures.

5. If child abuse is founded at a center for a child in the center's care and the perpetrator of the founded abuse is an employee, owner, operator, or resident of the center, send a letter to notify every parent, guardian or legal custodian of a child in care at the facility. See **NOTICE TO PARENTS** for instructions.

Comment: Note that Iowa Code Section 237A.7 does not prohibit the disclosure of information in the licensing file relative to the operation of the facility as long as it does not disclose information identifying individual persons, including children. In this regard, language in the documentation and summary information should not relate to child abuse in any way, but rather address compliance issues that may be involved.

Unlicensed Child Care Center

Legal reference: Iowa Code Sections 237A.2 and 19

Policy: Under penalty of law, a person shall not establish or operate a child care center for seven or more children without obtaining a license (except when the facility is registered as a child development home).

A person operating a child care center without a license who refuses to complete an application and refuses to cease operations as a child care center shall be referred to the county attorney's office, after notice from the Department by certified mail.

Procedure: The child care consultant shall contact the chairperson of the board, owner, or operator of the facility and explain the requirements for licensing, the penalty for operating without a license, and the procedure for licensing.

- ◆ If children in the facility are not considered to be at immediate risk, offer licensing materials, including the standards and procedures for licensing and an application.
- ◆ If children are at immediate risk, or if the facility will not submit an application at this time, inform the operator that the Department will be sending the facility a notice to discontinue operations as a child care center.

The notice shall include the following information:

- This is official notice from the Department of Human Services to discontinue all child-caring services as a child care center because the facility is not licensed.
- This official notice is effective upon receipt of this letter.

- Iowa Code Section 237A.19 states “a person who establishes, conducts, manages, or operates a center without a license shall be guilty of a serious misdemeanor.”
- The same section of the Iowa Code states “each day of continuing violation after . . . notice from the Department by certified mail shall be considered a separate offense.”

Send the notice to the operator by certified mail. Send a copy of the notice to the county attorney, to the licensing supervisor, and to the Division of Behavioral, Developmental and Protective Services.

If the facility continues to operate a child care center or preschool after official notice from the Department, ask the county attorney to take legal action against the facility, and notify the Division of Child and Family Services. How quickly you make this request depends on the risk of harm to children. However, make the request within 30 days of the notice.

The county attorney may file misdemeanor charges and request the court to restrain the person from operating by permanent injunction.

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Legal reference: Iowa Code section 237A.8, 441 IAC 109.2(4) and (5)

Policy: Initial applications or renewals shall be denied when the applicant does not comply with center licensing laws and rules to qualify for a full or provisional license.

Initial applications or renewals shall be denied, or a license shall be revoked or suspended, if corrective action has not been taken when any of the following occur:

- ◆ The facility is operating in a manner which the Department determines impairs the safety, health, or well-being of the child in care and the facility does not qualify for a provisional license because either:
 - A corrective action plan is not approved, or
 - A provisional license has already been given for the same standards for more than two consecutive years.
- ◆ The owner, operator, or staff member with direct responsibility for child care, or anyone living in the child care facility has been prohibited from involvement with child care. (Refer to [RECORD CHECKS](#).)

- ◆ Information provided to the Department either orally or in writing or contained in the center's files is shown to have been falsified by the provider or with the provider's knowledge.
- ◆ The center is not able to obtain approval from the fire marshal.

Procedure

1. When a recommendation is made to deny, suspend or revoke a license, send the recommendation to the licensing supervisor for approval and processing.
2. When the decision is made to deny, suspend, or revoke a license, the licensee shall receive a *Notice of Decision*, form 470-0602, by certified mail stating the reasons. A copy of the *Child Care Center Evaluation and Recommendation for License*, form 470-0724, or *Child Care Center Complaint*, form 470-4067, shall be sent with the notice.

When an official notice is given to deny, suspend or revoke a license, the Department shall notify the parent, guardian, or legal custodian of each child enrolled in the facility of the denial, suspension or revocation. The child care consultant shall get these names for the licensing clerk specialist so that the notice can be sent. See [NOTICE TO PARENTS](#).

3. After 30 days, if an appeal has not been made and the facility is still operating, send a certified letter with the following information:
 - ◆ A statement that this is official notice from the Department of Human Services to discontinue all child-caring services as a child care center because the license has been denied, suspended, or revoked.
 - ◆ A statement that this official notice is effective upon receipt of this letter.
 - ◆ The reasons with specific references to the Code of Iowa and the administrative rules.
 - ◆ That the Iowa Code section 237A.19 states, "a person who establishes, conducts, managers, or operates a center without a license shall be guilty of a serious misdemeanor."
 - ◆ That under the same Code section, "each day of continuing violation after . . . notice from the Department by certified mail shall be considered a separate offense."

Send a copy of the certified letter to the following county attorney, the licensing supervisor, and the Division of Child and Family Services. Place a copy in the licensing file.

4. If the decision to revoke or deny is appealed, a hearing is held, and the Department's action is affirmed, the appellant provider has 30 days in which to appeal to district court. Enforcement of the decision shall not take place until the earlier of the following:

- ◆ The 30 days for appeal to district court has expired, or
- ◆ The appellant provider has appealed but has not requested a stay of agency action.

Once one of these conditions has been met, the Department shall move to enforce the denial, suspension, or revocation, by taking same action as indicated in step 3 above.

5. If the appellant provider appeals to district court and requests a stay of agency action, and the stay is granted, the license shall remain in force until the case is resolved by a court decision.

If the court affirms the Department's decision, take action immediately to enforce the denial, suspension, or revocation and any court order issued by sending a certified letter containing the information specified in step 3.

6. If a facility continues to operate after official notice from the Department, ask the county attorney to take legal action against the facility, and notify the licensing supervisor and Division Child and Family Services.

The county attorney may file misdemeanor charges, and request the court to restrain the persons from operating by permanent injunction.

NOTICE TO PARENTS

Legal reference: Iowa Code Section 237A.5 and 237A.8

License Denied, Suspended, or Revoked

Policy: When a center or preschool has its license denied, suspended, or revoked; the Department shall send letters to notify every parent, guardian, or legal custodian of a child in care at the facility.

Procedure: Mail the letters after the notice to deny, suspend, or revoke the license is mailed to the facility. If the facility appeals the adverse action, send another letter to parents after all appeal rights have been exhausted.

Example: Initial Notice

Dear Parent,

Iowa Code Section 237A.8 and 441 Iowa Administrative Code 109.2(6)“d” require the Iowa Department of Human Services to notify parents, guardians, or legal custodians of each child for whom a licensed child care facility provides care when the Department revokes, denies, or suspends the facility’s license.

This is your notice that the Department of Human Services has taken action to (deny, revoke, suspend) the license of (facility). The Department took this action when:

(List the reasons checked on the *Notice of Decision* for denying, revoking, or suspending the license.)

If the director/owner of (facility) files an appeal regarding the decision to (deny, revoke, suspend) the license by (date), the center may remain open during the appeal process. If an appeal is not filed, the center will close effective (date 31 calendar days after the effective date of the notice).

Child Care Resource and Referral is available to assist you in locating child care. The agency is located at _____ the telephone number is _____.

If you have any questions or concerns, please contact (child care consultant’s name and number).

Sincerely,

Child care consultant’s name and title.

cc: Licensing Supervisor
Licensing Program Manager

Example: Notice After Appeal

Dear Parent,

Iowa Code Section 237A.8 and 441 Iowa Administrative Code 109.2(6)“d” require the Iowa Department of Human Services to notify parents, guardians, or legal custodians of each child for whom a licensed child care facility provides care when the Department revokes, denies or suspends a license.

You received a letter previously informing you of the Department of Human Services’ decision to _____ the license of (name of facility). (Name of facility) appealed the decision to deny its license on (date). Because of the appeal, the center was allowed to continue to operate, pending the outcome of the appeal.

The Department’s decision to _____ the license has been upheld. The center will close on or before (date).

Child Care Resource and Referral is available to assist you in locating child care. The agency is located at _____ the telephone number is _____.

If you have any questions or concerns, please contact (child care consultant’s name and number).

Sincerely,

Child care consultant’s name and title.

cc: Licensing Supervisor
Licensing Program Manager

Founded Child Abuse

Policy: When a center or preschool had responsibility for care of a child for whom there is a founded child abuse against an employee, owner, operator, or resident of the child care facility, the Department shall send letters to notify every parent, guardian, or legal custodian of a child in care at the facility.

Procedure: The letters shall be sent immediately in the case of founded sexual abuse or when the situation may cause the children in care to be at great risk. Take the following steps:

1. Check the Central Abuse Registry to verify that the founded case is on file.
2. Send a letter to the owner or operator explaining the action to be taken. Send a copy of the letter to the licensing supervisor. The letter shall contain the following information:
 - ◆ There has been a founded case of child abuse or neglect involving the owner, the operator, a resident, or one of the employees at the child care center or preschool.
 - ◆ Under Iowa Code Section 237A.5, the Department is required to evaluate the abuse and determine whether it merits prohibition of involvement with child care.
 - ◆ Under Iowa Code Section 237A.5, the Department is required to notify the parent, guardian, or legal custodian of each child for whom the facility provides child care, when the child care facility had responsibility for care of a child for which there is a founded child abuse against an employee, owner, operator, or resident of the child care facility.
 - ◆ In order to meet this requirement in the Iowa Code, a letter will be sent to each parent, guardian, or legal custodian.
 - ◆ A letter will be sent to the person on whom the abuse case was founded informing the person of the right to request correction and that the Department is required to notify the parent, guardian, or legal custodian of each child for whom the facility provides child care.
 - ◆ If at some future date the assessment is determined not to be founded, the Department will inform each parent, guardian, or legal custodian accordingly.

Example

Dear (Owner/Operator),

This letter is to inform you that a child abuse assessment has been completed by the Department of Human Services concerning (the specific abuse that was founded). (Number of reports) report/reports has/have been founded.

When a center has responsibility for the care of a child for which there is a founded child abuse against an employee, owner, or operator or resident of the center the actions that will be taken by the Department are as follows:

1. Under Iowa Code Section 237A.5 and 441 Iowa Administrative Code 109.6(6), the Department is required to evaluate the abuse and to determine whether it merits prohibition from involvement with child care.

The Department will send a notice to the person identified as the perpetrator of the abuse, informing the person as to whether involvement with child care has been approved or denied.

The Department will send the employer a letter informing the employer of the Department's decision regarding involvement with child care.

The person who is the subject of the evaluation has the right to appeal the decision to deny involvement with child care. If the person appeals within the time limits, the person can continue working in child care pending the outcome of the appeal unless there is a temporary or permanent injunction from being involved with child care or a court order or agreement not to provide child care.

2. The Department is required to notify parents, guardians, or legal custodians of each child receiving care in a child care facility if any child receiving care in the facility is a victim of a founded child abuse committed by an employee, the license holder, or a resident of the facility. This notice is required by Iowa Code Section 237A.5(2)(f) and 441 Iowa Administrative Code 109.6(6)“e.”

The notification shall identify the type of abuse but shall not identify the victim or perpetrator or the circumstances of the founded abuse. The Department will be sending a copy of the attached letter to every parent, guardian, or legal custodian of each child for whom the center provides care.

441 Iowa Administrative Code 109.6(6)“e” requires you to cooperate with the Department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care. Please send this list to (mailing address) by (date).

If at some future date the child abuse is determined not to be founded (through the decision on a potential appeal of the alleged perpetrator), the Department will inform each parent, guardian, or legal custodian accordingly.

3. A letter will be sent to inform the person on whom the abuse was founded of the right to request correction and of the letter that will be sent to the parent, guardian, or legal custodian of each child for whom the center provides care.

If you have any questions regarding the procedure for notification and would like to discuss the matter, please contact me.

I would like to remind you that under Iowa Code Section 237A.7, information about a child in a child care center or the child's relative is confidential. This information cannot be disclosed except upon inquiry before a court of law or with the written consent of the person or, in the case of the child, of the parent or guardian.

Thank you for your cooperation and assistance.

Sincerely,

Child care consultant's name and title.

cc: Licensing Supervisor
Licensing Program Manager

3. Send a letter to the person on whom the abuse was founded. The letter shall include the following information:
 - ◆ The child abuse report filed against you has been assessed, determined to be founded, and placed on the Central Abuse Registry as required by law.
 - ◆ Iowa Code Section 237A.5 requires the Department to evaluate the abuse and determine whether it merits prohibition from involvement with child care.
 - ◆ If you believe that the written summary of the child abuse report filed against you is not correct, you may request in writing a correction of that information. Your request should be sent to Iowa Department of Human Services, Appeals Section, 1305 E. Walnut St., Hoover Building, Fifth Floor, Des Moines, Iowa 50319-0114.

- ◆ The Department will send letters notifying the parent, guardian, or legal custodian of each child for whom your center provides child care that there has been a founded child abuse against an employee, owner, operator, or resident of the child care facility.

Example

Dear (employee, license holder or resident),

The child abuse report filed against you has been assessed, determined to be founded, and placed on the Central Abuse Registry as required by law. Under Iowa Code Section 237A.5 and 441 Iowa Administrative Code 109.6(6), the Department is required to evaluate the abuse and to determine whether it merits your prohibition from involvement with child care.

If you believe that the written summary of the child abuse report filed against you is not correct, you may request in writing a correction of that information. Send the request to Iowa Department of Human Services, Appeals, Section, 1305 E. Walnut St, Hoover Building, 5th Floor, Des Moines, Iowa 50319-0114.

The Department is required to notify parents, guardians, or legal custodians of each child for whom a child care facility provides care, if a child receiving care in the facility is a victim of a founded child abuse committed by an employee, license holder, or resident of the facility. This notice is required by Iowa Code Section 237A.5(2)(f) and 441 Iowa Administrative Code 109.6(6)“e.” The notification will identify the type of abuse but will not identify the victim or perpetrator or the circumstances of the founded abuse.

If you have any questions regarding the procedure for notification and would like to discuss the matter, please contact me. Thank you for your cooperation and assistance.

Sincerely,

Child care licensing supervisor’s name and title.

Enclosure

cc: Licensing Consultant
Licensing Program Manager

4. Obtain a list of names and addresses of all parents, guardians, or legal custodians for all children currently enrolled at the facility. Send a letter to each parent, guardian, or legal custodian with the following information:
 - ◆ Under Iowa Code Section 237A.5, the Department is required to notify the parent, guardian, or legal custodian of each child for whom a child care facility provides care if there has been a founded child abuse against an employee, owner, operator, or resident of the child care facility.
 - ◆ There has been a founded child abuse against an (employee, owner, operator, or resident of the child care facility) at the (name of center or preschool). (Do not use any names of persons.)
 - ◆ The facility has initiated the following corrective action plan (if any).
 - ◆ If the person has questions, the person may contact your office.

Example

Dear Parent,

The Department is required to notify parents, guardians, or legal custodians of each child for whom a child care facility provides care, if a child receiving care in the facility is a victim of a founded child abuse committed by an employee, license holder, or resident of the facility. This notice is required by Iowa Code Section 237A.5(2)(f) 441 Iowa Administrative Code 109.6(6)“e.”

I am writing to inform you that there has been (number) founded report(s) of (the specific abuse that was founded) that occurred at (name of center). The incident occurred on or about (date) and was assessed, founded, and placed on the Central Abuse Registry as required by law. If your child had been involved, you would have been contacted during the assessment.

Please note that this founded report is subject to appeal. If an appeal is successful, the report could be modified or removed from the Registry. You will be notified if the child abuse determination is later overturned on appeal.

Additionally, the Department is required by law to evaluate all criminal convictions and founded child abuse reports against employees, owners, operators and residents of child care facilities to determine whether the incident should prohibit the person’s involvement from providing child care.

Please be advised that the release of specific information regarding this incident is not possible due to the confidentiality requirements for child abuse information. Let me assure you again that the parents of any child directly involved in the situation were notified immediately and have been informed of the outcome.

If you have any questions or concerns, please contact me at (contact information).

Sincerely,

Child care consultant's name and title.

Enclosure

cc: Licensing Supervisor
Licensing Program Manager

LICENSING RECORD

Policy: The child care consultant shall maintain licensing records for child care centers and preschools. Licensing records are open public records. The information placed in the record shall be retained for a minimum of five years. The licensing record shall contain the following:

- ◆ *Application for License to Operate a Child Care Center*, form 470-0722
- ◆ Fire Marshal's approval
- ◆ *Child Care Center Evaluation and Recommendation for License*, form 470-0724
- ◆ *Notice of Action*, form 470-0728
- ◆ Floor plans
- ◆ Laboratory analysis of private water supply
- ◆ Correspondence
- ◆ *Child Care Center Complaint*, form 470-4067
- ◆ Documentation and summary information on violations of regulations
- ◆ *Notice of Decision*, form 470-0602, for the denial, revocation, or suspension of the license

RECORD CHECKS

Legal reference: Iowa Code Sections 237A.5 and 692.2; 441 IAC 109.6(237A)

Policy: Every owner or operator of a licensed facility, all staff members with direct responsibility for child care, any person living in a facility, and volunteers that have unrestricted access shall have a criminal records check and a child abuse registry check. In addition, the Department may conduct dependent adult abuse, Sex Offender Registry, and other public or civil offense record checks in this state or in other states.

Comment: Employees such as cooks, janitors, and bookkeepers that do not have direct responsibility for child care, access to a child, or unrestricted access to the facility are not required to have record checks. However, record checks should be completed on a person if the director or operator anticipates that an employee may have direct responsibility for a child in an emergency or when other staff are absent, or if a volunteer will have unrestricted access.

There are a few licensed centers and preschools with family members or other persons living in the facility. Iowa Code Section 237A.5 and 441 IAC 109.6(6) require that each person 14 years of age or older living in a child care facility have a records check.

Information provided by a criminal records check or by a child abuse registry check is confidential. A licensee may discuss this information only with the person on whom the check was completed. A licensee or any other person who uses the information for other purposes or who communicates the information to another person may be guilty of a misdemeanor.

Procedure: The owner or operator of a licensed facility is responsible for initiating all required criminal and child abuse record checks for the facility. This is done by completing *DHS Criminal History Record Check (Form B)*, form 595-1396. The completed forms are submitted to the child care licensing support staff at: Department of Human Services, Polk County River Place, RE: Child Care, 2309 Euclid Ave., Des Moines, IA 50310. Refer to [12-E Appendix](#) for instructions for completing the forms.

The child care licensing support staff completes a *Request for Child Abuse Information*, form 470-0643, for each criminal records check request being made. The registry and criminal records check forms are processed by the child care licensing support staff.

Forms with negative record checks, i.e. not showing any record of convictions or founded child abuse reports, are returned to the owner or operator of the licensed facility to be placed in the individual personnel files. Forms with positive record checks must be evaluated. (See below.)

Deferred Judgments

For the purposes of the background checks, the Department considers a deferred judgment as a conviction until the completion of the deferred judgment. Support for this position is found in the overarching purpose of the background-check statute, which is to protect children.

Iowa Code Chapter 907 supports the Department's position, stating that, in the imposition of a deferred judgment, "The court retains the power to sentence the defendant to any sentence it originally could have imposed subject to the defendant's compliance with conditions set by the court as a requirement of the deferred judgment."

In a deferred judgment situation, the defendant is on probation. At the end of that probation, no entry of judgment is made if the defendant has complied with the court's requirements. Until then, the court retains the ability to enter a judgment of guilty. Thus, to protect children, the Department considers a deferred judgment as a conviction until the completion of the deferred judgment.

Record Check Evaluation

Legal reference: Iowa Code Section 237A.5

Policy: If the record check finds a criminal conviction on record or a founded child abuse report on file, the Department shall evaluate the conviction or the abuse report and determine whether it merits prohibition of involvement with child care. In addition, the Department shall evaluate all other transgressions that the Department knows exists.

Certain transgressions require mandatory prohibition from involvement with child care, either permanently or for a limited time. Other transgressions require further evaluation, as follows:

- ♦ Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:
 - Founded child or dependent adult abuse that was determined to be sexual abuse.
 - Placement on the sex offender registry.
 - Felony child endangerment or neglect or abandonment of a dependent person.
 - Felony domestic abuse.
 - Forcible felony.
 - Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- ♦ Mandatory time-limited prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:
 - Conviction of a controlled substance offense under Iowa Code chapter 124.
 - Founded child abuse that was determined to be physical abuse.
- ♦ All other transgressions. A person with transgressions that are not a mandatory prohibition or a time-limited prohibition is evaluated on the following factors:
 - The nature and seriousness of the transgression in relation to the position sought or held.
 - The time elapsed since the commission of the transgression.
 - The circumstances under which the transgression was committed.
 - The degree of rehabilitation.
 - The likelihood that the person will commit the transgression again.
 - The number of transgressions committed by the person.

Procedure: All “other” transgressions must be evaluated and a decision made as to whether the transgression merits prohibition from involvement with child care.

Send form 470-2310, *Record Check Evaluation*, by certified mail to every person with an “other” transgression. Send a separate form for each transgression. Send a letter with the forms explaining their purpose and directing the person to complete and return the forms within ten days.

Example

Dear

Iowa Code Section 237A.5 requires the Department of Human Services to evaluate transgressions of persons wanting to own, operate, be employed in, or live in a licensed child care facility. The purpose of the evaluation is to determine whether these transgressions prohibit involvement with child care.

A completed records check has found that you have the following [fill in as applicable: convictions (and) founded child abuse reports (and) public offenses (and) civil offenses (and) revocation of a child care registration or license]

(Sample)

- | | | |
|-----------------------|--------------------|---------|
| 1. OMVI | date of conviction | 1-24-84 |
| 2. OMVI | date of conviction | 3-5-85 |
| 3. B&E | date of conviction | 10-1-87 |
| | or | |
| 1. Child abuse report | dated | 3-25-85 |
| 2. Child abuse report | dated | 8-5-86 |

Enclosed are (fill in number) *Record Check Evaluation* forms for completion. Please complete one form for each (fill in transgressions) listed above. The completed forms should be returned to this office within ten days from receipt of this letter. Failure to return the completed forms will result in a denial of your involvement with child care.

Please give this your prompt attention. The completed forms will assist the Department in making a decision whether or not these reports will prohibit involvement with child care.

If you have any questions about completing the forms, please call

_____.

Sincerely,

When the *Record Check Evaluations* are returned, the licensing supervisor in consultation with the child care consultant shall complete an evaluation and make a decision as to whether the reports merit prohibition of involvement with child care. The evaluation and decision shall be completed as soon as possible, but no later than 30 days after the *Record Check Evaluations* have been received.

If the forms are not returned, the decision shall be made as soon as possible, but no later than 30 days after the deadline for that response.

The evaluation and the decision must be based on the completed *Record Check Evaluations* and information from other sources, such as records or files available at district courts, law enforcement agencies, and the Department of Human Services.

Criminal Convictions

Staff shall consider each of the following areas when evaluating convictions for crimes. (The questions listed under each area are intended to assist staff in completing an evaluation.)

- ◆ Nature and seriousness of crime in relation to the position sought or held:
 - Did the crime involve property or people or both?
 - Was there potential danger to the victim?
 - Were there any injuries to people? Were they permanent?
 - Were weapons used? Was force used?
 - What was the punishment?
 - What was the age of the victim?
 - Was the victim in a vulnerable category, such as a child, handicapped, or elderly?
 - What was the age of the person committing the crime?
 - How does this information relate to the position sought?

- ◆ The time elapsed since the commission of the crime:

Convictions less than 5 years old indicate a higher risk.

Convictions 5 to 10 years old need to be considered with other factors.

Convictions older than 10 years are lower risk, unless they involved serious injury or no rehabilitation is evident.

- ◆ Circumstances under which the crime was committed:
 - Was sexual activity involved?
 - What was the judgment used in committing the crime?
 - Why did the person do what they did?
 - How does the person feel about it now?
 - Were other persons involved in the crime?
 - How was the crime discovered?
- ◆ Degree of rehabilitation and likelihood that the person will commit the crime again:
 - What has been the opportunity to show rehabilitation?
 - Was any restitution made?
 - Was community service a part of rehabilitation?
 - Was there therapy, counseling, or any kind of treatment? Did the person comply?
 - What was the treatment prognosis?
 - What was the length of the jail term and parole?
 - Was there any remorse?
 - Was there acceptance of responsibility for the criminal behavior?
 - How would the person act differently now?
 - Has there been opportunity to commit the same or similar crimes?
- ◆ Number of crimes:
 - Was there recidivism?
 - Were the crimes committed the same or different?
 - Was there any increase in the seriousness of crimes?

When the criminal record indicates a juvenile delinquency adjudication, you may not use that adjudication against the person in a record check evaluation. Do not evaluate this adjudication. However, if you find that the grounds for the adjudication raise concern for the health and safety of children in child care, please contact central office to find an alternate resolution to your concerns.

If the person was under 18 years of age and was waived to adult court, complete an evaluation as you would for any adult conviction or founded abuse.

Abuse Reports

Staff shall consider each of the following areas when evaluating founded child abuse reports. (The questions listed under each area are intended to assist staff in completing an evaluation.)

- ◆ Nature and seriousness of report in relation to the position sought or held:
 - What was the type of abuse?
 - Were criminal charges filed and was there a conviction?
 - Was there a CINA order?
 - What was the danger to the child?
 - Were there any permanent injuries?
 - Was this an action or omission?
 - What was the age of the child?
 - What was the age of the perpetrator?
 - What position does the person seek?
 - What age does the person wish to care for?
 - Will there be supervision or other adults around or available, or will the person be alone with children?
 - How does the information relate to the position sought?
- ◆ The time elapsed since the commission of the founded report:
 - Reports less than 3 years old indicate a higher risk.
 - Reports 3 to 10 years old need to be considered with other factors. Reports older than 10 years are lower risk unless they involve serious injury or no rehabilitation is evident.
- ◆ Circumstances under which the founded abuse was committed:
 - Did the abuse take place in a day care facility or in the child's or the perpetrator's home?
 - Was an object used in committing the abuse?
 - What was the judgment used in committing the abuse?
 - Why did the person do what they did?
 - How does the person feel about it now?
 - Were other persons involved in the abuse?
 - How was abuse identified or discovered?

- ◆ Degree of rehabilitation and likelihood that the person will abuse again:
 - Does the perpetrator accept responsibility?
 - Was there therapy or any kind of treatment?
 - Were the recommendations of the Department or court or therapists carried out?
 - What was the treatment prognosis?
 - How would the person handle the same situation now? Has the person been in a responsible position since the founded report? How was it handled?
- ◆ Number of founded abuse reports:
 - Was there recidivism?
 - Are the founded reports the same or different?
 - Did the founded reports become progressively worse?

Record Check Decision

Legal reference: Iowa Code Section 237A.5 and 441 IAC 109.6(6)

Policy: A person who has a transgression shall not own or operate a child care center or be employed as a staff member with direct responsibility for child care and shall not live in a child care facility, unless the Department has made an evaluation of the transgression which concludes that the transgression does not prohibit involvement with child care.

Failure to return the *Record Check Evaluation* form shall be a basis for prohibiting employment or licensure.

Procedure: The licensing supervisor shall complete a *Record Check Decision*, form 470-2386, for each person who completed a *Record Check Evaluation*. See 12-E-Appendix for instructions.

Send form 470-0602, *Notice of Decision*, and a copy of the completed form 470-2386, *Record Check Decision*, with the Department's decision by certified mail to the person on whom the evaluation and decision was completed.

Send a letter to the owner or operator of the facility that informs the center whether the person subject to an evaluation has been approved or denied involvement with child care. If there are any conditions or a corrective action plan related to the approval of the person's involvement with child care, the letter shall inform the center of any of these conditions or corrective action plan.

Note that the *Record Check Decision* and any other information relating to a conviction or a founded child abuse report is confidential. Any such information shall be kept in an administrative file separate from the licensing file and shall not be available for public review.

Comment: If the adverse decision is for an employee, and the employee decides to appeal, it shall be the decision of the owner or operator whether to let the employee continue working during the appeal.

A criminal record or child abuse record check in an employee's file is a confidential request. This record cannot be duplicated and transferred with an employee. Therefore, if an employee leaves one center and begins employment at a new center, the new center must complete a new form 595-1396, *DHS Criminal History Record Check, Form B*, and form 470-0643, *Request for Child Abuse Information*. The request does not have to be resubmitted for an employee who transfers between sites of the same corporation.



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
KEVIN W. CONCANNON, DIRECTOR

December 2, 2005

GENERAL LETTER NO. 12-E-19

ISSUED BY: Division of Behavioral, Developmental, and Protective Services for Families, Adults and Children

SUBJECT: Employees' Manual, Title 12, Chapter E, **CHILD CARE CENTERS**, Title page, revised; Table of Contents (page 1), revised; pages 1 through 31, revised; and pages 32, 33, and 34, new.

Summary

Chapter 12-E has been revised to reflect procedural changes and reformatted.

Effective Date

December 1, 2005

Material Superseded

Remove the entire Chapter E, from Employees' Manual, Title 12, and destroy it. This includes the following:

<u>Page</u>	<u>Date</u>
Title page	January 18, 1977
Manual Letter XII-E-2	November 19, 1991
Manual Letter XII-E-3	June 15, 1993
Manual Letter XII-E-4	December 8, 1998
Contents (page 1)	April 12, 1988
1, 2	April 29, 1986
2a	March 19, 1985
3, 4, 4a, 5-7	June 7, 1988
8, 8a	July 21, 1987
8b-8d, 9, 10, 10a, 10b, 11	June 7, 1988
12-14, 14a, 15	July 21, 1987
16, 16a-16d, 17, 18, 18a-18c	April 12, 1988
19-21	April 29, 1986
22	August 15, 1989
23, 24	June 7, 1988
24a, 25	July 21, 1987
26, 27	August 15, 1989
28, 29	April 29, 1986
30, 31	August 15, 1989

Additional Information

If you have questions about these manual changes, feel free to contact your child care consultant for licensing.



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
EUGENE I. GESSOW, DIRECTOR

March 13, 2009

GENERAL LETTER NO. 12-E-20

ISSUED BY: Division of Child and Family Services

SUBJECT: Employees' Manual, Title 12, Chapter E, *CHILD CARE CENTERS*, pages 11, 15, 16, 17, 26, and 34, revised.

Summary

Chapter 12-E is revised to update Departmental names and addresses and to correct a typographical error.

Effective Date

Immediately

Material Superseded

Remove the following pages from Employees' Manual, Title 12, Chapter E, and destroy them:

Page

Date

11, 15-17, 26, 34

December 2, 2005

Additional Information

Refer questions about this general letter to your area social work administrator.